

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1172 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MANHARLAL RATILAL PANDIT

Versus

NATVARLAL CHUNILAL DOSHIT

Appearance:

MR KN VALIKARIMWALA for Petitioner
MR UM JADEJA for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 01/08/2000

ORAL JUDGEMENT

1. This is a revision application filed specifically under the provision of section 29[2] of the Bombay Rent Act, at the instance of the original defendant, who claimed to be a tenant of the suit property, in a suit filed by the respondent - plaintiff. It is pertinent to

note that the plaintiff had filed the suit against the defendant specifically denying any relationship of landlord and tenant in respect of the property which was the subject matter of the suit, and had sought for a specific declaration that the defendant is a trespasser in respect of the suit property, and had therefore prayed for a decree of possession in his favour. It is also pertinent to note that the plaintiff had not filed the suit before the Rent Court constituted u/s 28 of the Rent Act, but had filed the suit before a Civil Court of ordinary jurisdiction as a Regular Civil Suit. The trial Court had also understood the case of the plaintiff and interpreted the suit plaint in the correct perspective. The trial Court after the total appreciation of evidence found in favour of the plaintiff, and incidentally on the basis of the defendant's contention that he is a tenant, recorded a finding of fact that there is no relationship of landlord and tenant between the parties, and that the defendant is a trespasser in respect of the suit property. The trial Court therefore passed a decree for eviction and mesne profit etc.

2. The defendant thereupon preferred an appeal. It is pertinent to note that the cause title of the appeal memo refers to it as an appeal u/s 29 of the Bombay Rent Act. However, this description in the cause title of the appeal memo is not determinative of the fact. Whether the appeal is a regular appeal u/s 96 of the Civil Procedure Code, or whether it is an appeal u/s 29 of the Bombay Rent Act, depends upon the facts and circumstances of the case, and also depends upon the finding recorded in the relevant context by the lower appellate Court.

2.1 In this context, the lower appellate Court was conscious that the plaintiff had brought the suit as a Regular Civil Suit before a court of ordinary civil jurisdiction. In para 10 of its judgement, the lower appellate Court has discussed the various aspects which are required to be considered, arising from the defendant's contention that he is a tenant. In short therefore, the lower appellate Court was conscious that it was dealing with a regular civil appeal rather than an appeal u/s 29 of the Bombay Rent Act.

3. It is therefore obvious that an appeal would lie from decree of a civil court of ordinary jurisdiction to the appropriate appellate court only u/s 96 of the Civil Procedure Code, and a further remedy certainly would not be by way of a revision u/s 29[2] of the Bombay Rent Act. This revision is specifically filed u/s 29[2] of the Bombay Rent Act, which revision is obviously incompetent.

A revision which is contemplated by section 29[2] of the Rent Act is a revision against an order passed in appeal u/s 29[1] of the Bombay Rent Act, and from no other appeal.

4. Obviously therefore, the present revision application is incompetent and the same is therefore dismissed. Rule discharged with no orders as to costs.

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